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SR

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/174,868 10/19/98 MUSACCHIA

J 14359-016

EXAMINER

QM32/0403

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CEGIELNIK, II

ART UNIT

PAPER NUMBER

3712

DATE MAILED:

04/03/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/174,868	Applicant(s) MUSACCHIA, JOHN	
	Examiner Urszula M. Cegielnik	Art Unit 3712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claims ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- | | |
|--|--|
| 15) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ |
| 16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ | 20) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 3-5, and 10 appear to further positively recite features which cannot be claimed (i.e. "user" in claim 1; "body limb" in claims 3 and 4; "limb of a user's body", "body limb of the user" and "body limb" in claim 5; "a hunter" and "the user" in claim 10). Reference to a human body portion is permitted only to be recited functionally. Furthermore, claimed elements are further structurally limited by features which at first were recited only functionally. As an example, in the first paragraph of part (b) of claim 1, "body of a user" is recited functionally. However, in the last paragraph of part (b), the sound emanating surface is required to be elevated above the user of the device by the elevating device, i.e., the claimed elevating device and sound emanating surface are further structurally limited by the user. Therefore, it is not known whether the user and/or body portion is being claimed or not.

Claims 3, 6, and 10 recite limitations which have insufficient antecedent bases. Claim 3 recites the limitation "said body attachment device" on the last line of the claim. Claim 6 recites "said platform" in line 2 of the claim. Claim 10 recites "a hunter" in line 7, "a hunter" in line 8, and "the user" in line 9.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Bowes.

Bowes discloses a hunting device for producing sounds comprising a game call having a scratch surface (42) separated from a sound emanating surface (43); the sound emanating surface having apertures (52); a body attachment assembly (Figure 2) as set forth in claims 1 and 10; an elevating device (40) elevating the sound emanating surface of said game call as recited in claim 1; said elevating device comprises legs (44) each having a first end and a second end; said first ends of said legs are attached to said game call and said second ends of said legs are in contact with the body limb by said body attachment as described in claim 3; said elevating device comprises a platform (40) having a top surface and a bottom surface, said platform supporting said game call; and legs depending from said platform, each said leg having a first end and a second end, wherein said first end of each said leg is in contact with said platform; and wherein said second end of each said leg is in contact with the body limb by said body attachment assembly as set forth in claim 4. As is readily apparent the game call and elevating device of Bowes are "one piece".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bowes in view of Official Notice hereby taken that game calls with a rectangular platform and legs are well known devices for calling game. Bowes discloses most of the features of the invention except for the platform of the hunting device being substantially rectangular and including front and rear legs extending from said bottom surface of said platform. It would have been obvious in view of Official Notice to construct the platform of Bowes to have a rectangular shape for the purpose of making the device of Bowes more comfortable to wear with the platform portion being lengthwise aligned with the body portion so it won't snag on an object when a person is moving.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bowes. Bowes discloses most of the features of the invention including a tether (col. 3, lines 31-32) and a striker (14).

Bowes does not show the opposing end of the tether being attached to the game call. It would have been obvious to one of ordinary skill in the art to modify the device of Bowes to attach the tether to the game call for the purpose of making the game call more portable.

Allowable Subject Matter

Claims 6-9, 12, and 13 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

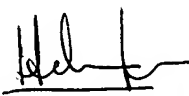
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula M. Cegielnik whose telephone number is (703) 306-5806. The examiner can normally be reached on Monday through Friday, from 8:30AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jacob Ackun can be reached on (703) 308-3867. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-3579 for regular communications and (703) 305-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Urszula M. Cegielnik
Examiner
Art Unit 3712

March 29, 2001


JACOB K. ACKUN, JR.
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700